

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF GEORGE GABBARD) APPEAL NO. 06-A-2175
AND ROBERT WHITTEKIEND from the decision of the) FINAL DECISION
Board of Equalization of Elmore County for tax year) AND ORDER
2006.)

AGRICULTURAL EXEMPTION APPEAL

THIS MATTER came on for hearing November 1, 2006, in Mountain Home, Idaho, before Hearing Officer Steve Wallace. Board Members Lyle R. Cobbs and David E. Kinghorn participated in this decision. Appellants George Gabbard and Robert Whittekiend appeared. Assessor Jo Gridley, Chief Appraiser Joell Soboslai, Prosecuting Attorney Kristana Schindele and Residential Appraiser Connie Dorr appeared for Respondent Elmore County. This appeal is taken from a decision of the Elmore County Board of Equalization (BOE) modifying the protest of the valuation for taxing purposes of property described as Parcel No. RP001700000200A.

The issue on appeal is whether subject property qualifies for an exemption from property taxes pursuant to Idaho Code § 63-602K and § 63-604.

The decision of the Elmore County Board of Equalization is affirmed.

FINDINGS OF FACT

The assessed land value is \$69,447. Appellants request the land be valued as agricultural land. If subject does not qualify for an agricultural exemption, Appellants request subject be assessed equitably with neighboring properties.

The subject property is 40.86 acres of vacant land located in Elmore County.

Appellants acquired subject about 13 years ago and it was taxed as forest land at the time. In the second year of ownership, subject was assessed at market value. The assessed value has continued to increase since that time. Appellants presented a history of assessment increases of subject from 2000 to 2006. This year the increase in assessed value was 75.5%.

Appellants' Exhibit included photographs of the subject property, several views of partial fencing and a pile of fence posts still to be set. The exhibit included a list of improvements and expenditures for subject. Appellants explained this is the start up phase for the enterprise. The list totaled \$5,592.50 and included costs for a dam permit, backhoe use and cement and labor costs for the spillway construction. Costs to build an access road, costs for metal fence posts, railroad ties and fencing materials were also included. Finally, the list included costs for a water line, stock tank permit, faucets, stock tank and installation. The cost schedule was not dated.

Appellants further explained the stock water pond is being built and water rights have been secured to fill the pond. Some fence posts had been erected and the access road was completed in 2005. The fencing were started in 2004. On January 1, 2006 all of the corner posts were in, only the wire needed to be strung. In 2005 a water line was put in. The stock tank was not on the property as of the hearing date. Appellants maintain the property should not be taxed at market value when it is being readied for grazing.

Appellant's Exhibit included copies of two leases, dated July 1, 2006. The first was to become effective August 1, 2006 between George Gabbard Jr. and Inspection Pro, Inc., for a 10 year term. An additional lease was included between the same parties, it included a legal description and commenced on July 1, 2006 for a five (5) year term. The annual \$100 fee was based on what appeared to be fair for three months of grazing.

Taxpayer testified the Corporation which the subject is leased to is owned by Appellant and is a home inspection service. The corporation does not own any cattle. Appellants do not own any cattle and do not graze any other part of Idaho. No cattle were owned by either as of the hearing date, November, 2006.

Appellants maintained Idaho Code § 63-604 only requires land be leased to a bona fide

lessee for grazing purposes. The cattle are not on the land yet, but it is leased for grazing purposes, and contended to meet the requirement of Idaho Code. Appellants are planning to put about five (5) cows on subject in the latter part of May or June, 2007,

Appellant presented copies of the assessed values of several 40 acre properties in subject's neighborhood. Two of the 40 acre tracts were assessed as forest land for \$2,500. Six other lots were assessed for around \$39,000 in 2005 and the values were reduced to around \$37,000 for 2006. Subject's assessment went from \$39,570 to \$69,447 in 2006.

In the event subject does not qualify as grazing ground, Appellant requests the assessed value be reduced to the value of other neighboring 40 acre parcels.

Respondent described subject property and maintained it was not actually being used for grazing. Respondent noted a Supreme Court case, Ada County Board of Equalization v. Highlands Inc, Smith Family LLC., 141 Idaho 202, 108 P.3d 349 (2005). Respondent maintained as of July, 2006 no cattle grazing had taken place on subject. A lease was produced however neither Appellant submitted a Schedule F from a 2005 income tax return. The county provided it would allow subject grazing exemption in 2007 if the land is grazed. Respondent viewed subject property in October, 2006 and testified there was no indication there had been cattle on subject.

Respondent's Exhibit 1 included a list of vacant land sales in subject and surrounding area. The Appraiser noted four sales across the road from subject. Four, 10 acre tracts sold in July 2006 for \$150,000, \$125,000, \$165,000 and \$100,000 each.

Respondent noted the lots referred to by Appellants as neighboring and assessed for less than subject, all belong to the same owner. The assessed values were less because the total ownership exceeds 200 acres and economy of scale applied, lowering the value of each acre

based on the total ownership.

Respondent maintains subject parcel is assessed fairly and equitably based on the use and neighboring sales.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value or exempt status. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

The first issue before the Board is whether subject property qualifies for an agricultural exemption.

Appellants produced a copy of a lease for grazing purposes, and maintained the property is being prepared for grazing, however cattle have not been placed on subject yet. It has taken several years to prepare the land for grazing.

63-604. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED. (1) For property tax purposes, land which is actively devoted to agriculture shall be eligible for appraisal, assessment and taxation as agricultural property each year it meets one (1) or more of the following qualifications:

(a) The total area of such land, including the homesite, is more than five (5) contiguous acres, and is actively devoted to agriculture which means:

- (i) It is used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables; or
- (ii) It is used to produce nursery stock as defined in section 22-2302(11, Idaho Code; or
- (iii) It is used by the owner for the grazing of livestock to be sold as part of a for-profit enterprise, or is leased by the owner to a bona fide lessee for grazing purposes; or
- (iv) It is in a cropland retirement or rotation program.

Subject property is over five (5) contiguous acres and does have a lease for grazing dated July 1, 2006. There was no dispute the property is being readied for grazing and cattle were not

on the property as of January 1, 2006, or at the time of hearing, in November 2006. Two recent Supreme Court cases clearly address use and lease agreements in respect to agricultural enterprises.

As the Supreme Court held in Roeder Holdings LLC v. Board of Equalization of Ada County, 136 Idaho 809, 41 P.3d 237 (2001), a claim of exemption from tax must be justified, if at all, by the terms of the statute.

In *Roeder*, the Court maintained: Dual use of the land would not prohibit a grant of exemption, but no current or imminent agricultural use would fail to satisfy the statutory requirements. The court found the agricultural exemption is based on active use of the land for one of the specified purposes.

In Ada County Board of Equalization v. Highlands Inc.; Smith Family L.L.C., 141 Idaho 202, 108 P.3d 349 (2005), no evidence of livestock grazing or conditions suitable for livestock grazing were found on the property. The court found actual use of the land was a requirement to qualify for the exemption. If the lessee is not actually using the land for grazing purposes, then he is not a bona fide lessee for grazing purposes.

We find these cases to be on point with the case currently before the Board. However, one additional issue requires consideration. Appellants have been "preparing" the subject for grazing. In *Roeder*, the Court said;

The County further asserts that because Roeder was not producing a crop on the subject property on January 1, 1998, the denial of an agricultural exemption was justified. Pursuant to I.C. § 63-602Y, property subject to a change in status must meet the exemption requirements as of the first day of January of the year for which the exemption is sought. Although there was no crop growing on the property on January 1, 1998, Roeder had prepared the land for planting the previous fall in compliance with agricultural practices in order to be ready to plant with the spring rains. Thus, the land qualified as "actively devoted to agriculture."

Recognizing the decision of the Court, the Board also must consider Appellants'

“preparation “ of subject in prior years in ruling on the exemption for the current year. In *Roeder*, the subject ground was prepared for planting in the fall and planted at the next available opportunity, the following spring. In the current case subject was not grazed on January 1, 2006. Appellant testified the grazing season is approximately 3 months, beginning in May or June. According to the record, no cattle were introduced to the subject in May or June of 2006, nor could they have been, as preparation was not complete. Appellants plan to put cattle on the property in the spring of 2007. Therefore, we find subject simply does not meet the requirements for the agricultural exemption for the tax year 2006 based on use.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Elmore County Board of Equalization concerning the subject parcel be, and the same hereby is, affirmed.

DATED this 15th day of March , 2007.